

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 90-34050

MILLERS COVE ENERGY COMPANY, INC.

Debtor

MILLERS COVE ENERGY COMPANY, INC.,  
DARRELL BARNWELL, HUBERT D. BARNWELL,  
JUDY BARNWELL, CAROLYN B. PETREY,  
SUSAN M. KINCAID, Trustee under the Will of  
Joseph A. Kincaid, deceased, and MT. AIRY FARMS,  
a Virginia general partnership

Plaintiffs

v.

Adv. Proc. No. 91-3194

RONALD L. MOORE, individually, and  
RUBY MOORE, ROBERT MOORE, and  
RONALD L. MOORE, Co-Executors  
of the Last Will and Testament of  
Royce G. Moore, deceased, and  
ARK LAND COMPANY

Defendants

**MEMORANDUM ON REMAND  
FOR CALCULATION OF DAMAGES**

APPEARANCES: NEAL & HARWELL  
William T. Ramsey, Esq.  
2000 First Union Tower  
150 Fourth Avenue North  
Nashville, Tennessee 37219

DAVE B. JORDAN, P.C.  
Dave B. Jordan, Esq.  
Post Office Box 5215  
Kingsport, Tennessee 37663

BOLLING & HEARL

C. R. Bolling, Esq.  
Post Office Box 1250  
Richlands, Virginia 24641  
WETHERINGTON & MELCHIONNA  
William M. Terry, III, Esq.  
Post Office Box 90  
Roanoke, Virginia 24002  
Attorneys for Plaintiffs

HUNTON & WILLIAMS

Joseph P. Congleton, Esq.  
Post Office Box 951  
Knoxville, Tennessee 37901  
Attorneys for Defendant Ark Land Company

George Todd East, Esq.  
155 Shelby Street, Suite 3  
Kingsport, Tennessee 37660

YEARY & ASSOCIATES, P.C.

Michael A. Bragg, Esq.  
Emmitt F. Yeary, Esq.  
Post Office Box 1685  
Abingdon, Virginia 24210  
Attorneys for Defendants Ronald L. Moore,  
individually, and Ruby Moore, Robert Moore,  
and Ronald L. Moore, Co-Executors of the  
Last Will and Testament of Royce G. Moore,  
deceased

**RICHARD STAIR, JR.**  
**UNITED STATES BANKRUPTCY JUDGE**

This matter is again before the court following remand by the United States Court of Appeals for the Sixth Circuit on May 9, 2000, for a new calculation of damages. The Plaintiffs, on August 21, 2000, filed a Plaintiffs' Calculation of Damages and the Defendants, on the same date, filed a Calculation of Damages Submitted on Behalf of Ronald L. Moore, *Et Al*. Both of these documents were filed pursuant to an Order entered by this court on July 20, 2000, requiring the parties to confer to determine if they could stipulate the damages to which the Plaintiffs are entitled. They could not.

## I

This adversary proceeding is based on mining leases entered into by the parties in September 1975. The lengthy history of the parties' relationship is set forth in the Sixth Circuit's decisions, *Millers Cove Energy Co., Inc. v. Moore (In re Millers Cove Energy Co., Inc.)*, 62 F.3d 155 (6th Cir.1995) (per curiam) ("*Millers Cove I*"), *Millers Cove Energy Co., Inc. v. Moore (In re Millers Cove Energy Co., Inc.)*, 128 F.3d 449 (6th Cir. 1997) ("*Millers Cove II*"), and *Moore v. Millers Cove Energy Co., Inc.*, No. 98-6279, 2000 WL 658052 (6th Cir. May 9, 2000) ("*Millers Cove III*").

A concise summary of the history of this litigation and of the issues presently before the court on remand from the Sixth Circuit are found in *Millers Cove III*:

On April 5, 1989, Millers Cove sent the Moores a notice of termination of the leases. The Moores responded by filing an action in Virginia state court seeking a declaration that the leases were in full force and effect. While that action was pending, Millers Cove was placed in bankruptcy. On August 28, 1991, Millers Cove filed the present adversary proceeding in the bankruptcy court. Millers Cove

alleged that the Moores had breached the terms of the leases, thereby entitling Millers Cove to terminate the leases and recover damages.

After a bench trial, the bankruptcy court ruled that the Moores had not breached the leases. The court determined that the Moores were excused from mining the property because of the UMW strike, because of the litigation with Virginia Partners, and because of economic infeasibility. The district court affirmed the bankruptcy court's ruling, but this court reversed in part, holding that performance was not excused by economic infeasibility. We remanded the case to the bankruptcy court for a determination of damages caused by the Moores' breach of the leases. See *In re Millers Cove Energy Co., Inc.*, 62 F.3d 155, 159 (6th Cir. 1995) [*Millers Cove I*].

On remand, the bankruptcy court determined that Millers Cove was entitled to \$123,101 in damages. Both sides appealed to the district court, and the district court reversed on three issues. First, it held that the bankruptcy court erred in finding that Millers Cove was not entitled to damages after April 5, 1989, the date as of which Millers Cove terminated the leases. The district court concluded that Millers Cove was entitled to recover lost royalties until June 5, 1991, the date on which Millers Cove sold its interest in the leases. Second, the district court held that the bankruptcy court erred in modifying the projected coal production schedule on which the calculation of damages was based. Third, the district court held that the bankruptcy court erred in applying Virginia's five-year statute of limitations rather than Tennessee's six-year statute of limitations. The district court remanded the case to the bankruptcy court for a recalculation of damages in accordance with its order. The Moores then appealed to this court, but we dismissed the appeal for lack of subject matter jurisdiction on the ground that there was no final judgment. See *In re Millers Cove Energy Co., Inc.*, 128 F.3d 449 (6th Cir. 1997) [*Millers Cove II*].

The bankruptcy court then recalculated damages as directed by the district court, determining that Millers Cove is entitled to \$1,453,036. The district court affirmed, and the case is now before us for the third time.

*Millers Cove III*, 2000 WL 658052 at \*2.

The Sixth Circuit addressed four issues raised by the Moores on appeal in *Millers Cove III*. First, the court considered whether Virginia's five-year statute of limitations applied as determined by this court in its Memorandum on Remand and on Plaintiffs' Motion for Entry of Final Judgment

filed on April 15, 1996, or whether Tennessee's six-year statute of limitations applied as was determined by the district court in its September 26, 1996 Order reversing this court's April 15, 1996 Judgment and remanding the Plaintiffs' action for a recalculation of damages.<sup>1</sup> The Sixth Circuit found that this court had correctly applied Virginia's five-year statute of limitations and reversed the district court on this issue. *See Millers Cove III*, 2000 WL 658052 at \*2-4.

Second, the Sixth Circuit considered whether this court correctly determined in its April 15, 1996 decision that the Moores were no longer entitled to damages after Millers Cove terminated the leases on April 5, 1989, or whether Millers Cove was entitled to damages after termination of the leases as had been determined by the district court in its September 26, 1996 remand Order.<sup>2</sup> The Sixth Circuit determined that this court correctly decided that Millers Cove had no cause of action after April 5, 1989, and reversed the district court on this issue. *See id.* at \*4.

Thirdly, the Sixth Circuit was called upon to determine whether this court properly modified the projected coal production schedule on which it calculated Millers Cove's damages in its April 15, 1996 decision or whether such a modification was plain error as determined by the district court in its September 26, 1996 remand Order.<sup>3</sup> The Sixth Circuit determined that some modification of the projection schedule was necessary and that this court's method was not shown to have been inappropriate. It therefore reversed the district court on this issue. *See id.* at \*4-5.

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<sup>1</sup> On November 17, 1997, this court, following the mandate of the district court contained in its September 26, 1996 remand Order, filed a Judgment awarding the Plaintiffs damages recalculated at \$1,453,036.50. It is this November 17, 1997 Judgment, accompanied by a Memorandum on District Court's Order of Remand, as affirmed by the district court, that gave rise to *Millers Cove III*.

<sup>2</sup> *See supra* n.1.

<sup>3</sup> *See supra* n.1.

Finally, the Sixth Circuit considered an argument made by the Moores that this court erred in the amount of minimum royalty payments it credited against the damages to which Millers Cove was entitled. The Moores contended that they should be credited for all minimum annual royalty payments paid to Millers Cove since the beginning of the leases. The court held this argument to be without merit. *See id.* at \*5.

The court finds that the effect of *Millers Cove III* is to reinstate the production schedule, lease termination date, and statute of limitations provisions of the court's April 15, 1996 Memorandum on Remand and on Plaintiffs' Motion for Entry of Final Judgment. In that Memorandum, the court calculated \$262,035.23 in actual royalties due,<sup>4</sup> utilizing the methods later approved by *Millers Cove III*. From that total, the court subtracted \$138,934.00 in minimum royalties actually paid,<sup>5</sup> arriving at the judgment of \$123,101.23.

In its subsequent December 2, 1996 Memorandum on District Court's Order of Remand, the court credited the Moores with a different minimum royalties amount. There, Millers Cove's gross damages were reduced by \$300,000.00, reflecting \$50,000.00 per year in minimum royalties for the six-year statute of limitations period applied in that opinion. This offset method was pursuant to the district court's direction and was not appealed by either party in *Millers Cove III*.

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<sup>4</sup> \$60,986.48 for the court's Year 7 of development (\$85,176.00 less \$24,189.52 barred by Virginia's five-year statute of limitations), \$90,390.75 for the court's Year 8, \$104,297.25 for the court's Year 9, and \$6,360.75 for the court's Year 10. *See* April 15, 1996 Memorandum on Remand and on Plaintiffs' Motion for Entry of Final Judgment, at 17-19, 25.

<sup>5</sup> \$50,000 for the court's Year 7, \$50,000.00 for the court's Year 8, and \$38,934.00 for the court's Year 9. *See id.* at 18-19.

*Millers Cove III* remanded to this court for a recalculation of damages in accordance with its mandate. *See Id.* at \*6. Had the Sixth Circuit intended for this court to merely reinstate its April 15, 1996 Judgment, it could have readily and clearly communicated that instruction. Instead, it stated that "[f]or the five years permitted by Virginia's statute of limitations, Millers Cove is entitled to receive per-ton royalties based on Mr. Willis' production schedule (as modified by the bankruptcy court), less \$50,000 per year in pre-paid annual minimum royalties." *See id.* at 5.

Therefore, pursuant to the Sixth Circuit's mandate, this court will return to the \$262,035.23 gross damages calculation previously determined through the application of Mr. Willis' production schedule. Gross damages will then be reduced by \$250,000.00, equal to \$50,000.00 per year for the five years permitted by Virginia's statute of limitations, as directed by the Court of Appeals. Accordingly, a judgment in the amount of \$12,035.23 will be entered in favor of the Plaintiffs.

The court will not consider the Plaintiffs' request for post-judgment interest from the date of this court's original damage calculation, April 15, 1996, nor will it consider the Defendants' request for an award of interest on a 1993 minimum royalty payment held in escrow by the Plaintiffs' attorney, C. R. Bolling. These are not matters raised on appeal and the court will not consider them here for the first time.

FILED: September 22, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE

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Debtor

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RONALD L. MOORE, Co-Executors  
of the Last Will and Testament of  
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ARK LAND COMPANY

Defendants

**J U D G M E N T**

Pursuant to the Mandate issued by the United States Court of Appeals for the Sixth Circuit on July 13, 2000, remanding the Plaintiffs' action for a recalculation of damages and for the reasons stated by this court in the Memorandum on Remand for Calculation of Damages filed this



date, it is ORDERED, ADJUDGED, and DECREED that judgment is awarded the Plaintiffs against the Defendants for damages in the amount of \$12,035.23.

ENTER: September 22, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.  
UNITED STATES BANKRUPTCY JUDGE